

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WILLIAM HINKLE, JR.,

Petitioner,

vs.

E.K. MCDANIELS, *et al.*,

Respondents.

3:08-cv-00101-LRH-RAM

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review under Rule 4 of the Rules Governing Section 2254 Cases. Following initial review, it appears that the Court lacks jurisdiction over the subject matter because petitioner's sentence on the challenged conviction had fully expired prior to the constructive filing date of the original federal petition, such that petitioner no longer was in custody under that conviction for purposes of federal habeas jurisdiction. Petitioner therefore will be directed to show cause in writing why the petition, as amended, should not be dismissed for lack of jurisdiction.

Petitioner was convicted in the Fifth Judicial District for the State of Nevada on August 8, 2005, of driving under the influence of alcohol, under Case No. CR4760. The judgment of conviction sentenced him to a maximum term of 50 months with a minimum term of not less than 20 months, with pre-sentence credit of 161 days. See #11, at electronic docketing pages 13-14 (judgment of conviction). The records of the Nevada Department of Corrections reflect that the sentence under the judgment of conviction fully expired on May 14, 2007. See #14-2 (sworn declaration of Shelly Williams).

1 Petitioner mailed the original federal petition in this matter to the Clerk of Court for filing on or about
2 February 26, 2008, after the expiration of the sentence.

3 The federal habeas statute gives district courts jurisdiction to entertain petitions challenging a
4 judgment of conviction only for persons who are "in custody" under the conviction at the time that the
5 petition is filed. *See, e.g., Maleng v. Cook*, 490 U.S. 488, 490-91, 109 S.Ct. 1923, 1925, 104 L.Ed.2d
6 540 (1989). A habeas petitioner is no longer "in custody" under a judgment of conviction for purposes
7 of federal habeas jurisdiction where the sentence imposed by the judgment has fully expired prior to the
8 filing of the federal petition. *See, e.g., Maleng*, 490 U.S. at 492, 109 S.Ct. at 1926; *De Long v.*
9 *Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). It thus appears that the Court lacks jurisdiction over
10 the petition in this case, which was filed after the expiration of the sentence under the challenged
11 judgment of conviction.

12 IT THEREFORE IS ORDERED that, within thirty (30) days of entry of this order, petitioner
13 shall SHOW CAUSE in writing why the petition, as amended, should not be dismissed without
14 prejudice for lack of jurisdiction over the subject matter because the sentence imposed by the challenged
15 judgment of conviction was fully discharged prior to the filing of the federal petition. If petitioner does
16 not timely respond to this order, or if petitioner does not assert facts sufficient to establish jurisdiction,
17 the petition will be dismissed without prejudice for lack of jurisdiction. Any assertions of fact that are
18 not supported by a sworn declaration under penalty of perjury and/or other competent evidence will be
19 disregarded.

20 DATED this 10th day of November, 2009.



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24 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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